

I strongly applaud the amended rules governing unsolicited fax advertisements. The removal of the "existing business relationship" exception by the FCC is important because of the many different contacts and business dealings that small business' have with suppliers, banks, credit companies, phone and internet providers, restaurants that you eat lunch at, etc. It is a real annoyance to have to contact all these entities individually to express you desire not to be solicited by fax. On top of that, the inter-relationship of various subsidiaries and "business partners" makes it difficult to draw a line as to who you have a business relationship with, and therefore who can and cannot send a fax. A bright line rule (ie, you must get permission first) is much easier to follow, and properly places the burden on the person or business wanting to waste my fax supplies. In addition, and perhaps more importantly, is the new requirement that permission be obtained in writing. I represent twelve other clients, mostly small businesses, in litigation against junk-faxers, and in several instances, the defendant has falsely stated that they had obtained permission by calling an employee. I was able to oppose this falsehood in one case because the employee was no longer working there on the day the permission call was claimed to have been placed. In other instances, I have used testimony from a client about his "no faxes accepted" policy and because of previous appearances in front of the judge was able to rebut the faxers claims. In other words, having a requirement for written permission solves the problem created by unscrupulous fax blasters making false claims about oral permission. Since the statute does not provide for attorney fees, any fact issue that requires arguing or additional discovery necessarily defeats consumers ability to enforce the statute and stop junk faxers, because the cost of litigation deters them from pursuing cases. On the other hand, mass-faxing supplies substantial benefits to the advertiser (else why would they do it) and it is often the faxing entities main or only source of business, so they have every incentive to interpose any excuse which will delay or deter the unwilling recipient from pursuing a claim. In response to industry criticism, I would say the following: No one is REQUIRING them to send fax advertisements. If the new rules impose requirements that increase the cost beyond what they are willing to pay, STOP DOING IT! They can still use mail, flyers, TV, radio, etc. The only reason they are so adamant about fax advertising is it makes the recipient bear the cost of the advertisement. That is the whole reason Congress passed the TCPA in the first place. I urge you not to recant your position in the new rules. Keep the burden of compliance where it belongs: On the ones wishing to use this particular type of advertising. Thank you for your attention.